

REMARKS

I. Status of the Claims

Claims 1, 3-12, 14, 15, 18-20, 22-24, 27-39, and 40-41 and new claims 42 and 43 are pending in this application. Claims 1, 3-12, 14, 15, 18-20, 22-24, 27-39, and 40-41 have all been rejected. No new matter is added by this amendment.

II. Claim Objections

Claims 11, 24, 29, 36, 37, and 38 are objected to because of the following informalities: It is suggested to delete “configure to” (claim 11, lines 2, 11, 13; claim 24, line 2; claim 29, lines 2, 12; claim 36, lines 4, 7, 12, 15; claim 37, lines 4, 9; claim 38, lines 4, 11, 14), because it has been held that the recitation that an element is “configured” to perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. Appropriate correction is required.

In response, the Applicant respectfully disagrees with the Examiner’s statement that the term “configured” is not a positive limitation and the Applicant is not aware of any authority supporting the Examiner’s assertion. Accordingly, the Applicant wishes to retain the term “configured” in the claims.

III. Rejections under 35 U.S.C. § 103

Claims 1, 3, 11, 18, 19, 22, 24 -33, and 40 - 41 are rejected under 35 U.S.C. 103(a) as being obvious over Dan et al (Dan hereinafter) in view of Kitamura et al (US 5,999,160; hereinafter Kitamura). Claim 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dan and Kitamura in view of Hines et al (Hines hereinafter).

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dan and Kitamura in view of Hines et al (USP 6570585).

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dan and Kitamura in view of Bell.

Claims 4, 7, 14, 15, 20, 23, and 34-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dan and Kitamura in view of Yu et al (Yu hereinafter).

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dan and Kitamura in view of Yu et al (Yu hereinafter) and further in view of Hines.

IV. Applicant's Response

A. Claims 1, 3, 11, 18, 19, 22, 24-33, and 40-41 are rejected under 35 U.S.C. 103(a) as being obvious over Dan et al (US 6,560,639; hereinafter Dan) in view of Kitamura et al (US 5,999,160; hereinafter Kitamura).

The Applicant's remarks in the amendments filed March 5, 2008 and November 7, 2008 regarding the Dan reference, are incorporated herein by reference.

The Examiner points to the Dan reference at column 17, lines 20-29 and Figure 9, which discusses the appearance of a web page, the Dan reference reading in part as follows:

“...to a header, a top portion of a web page and/or to a footer, a bottom portion of a web page.”

The Applicant's claims recite “...packet transfer operation in which packets of content are transferred ...packets comprises a payload portion and a separate header portion ...”.

Clearly, the Dan reference is not disclosing or suggesting the Applicant's claimed packet headers, but is instead discussing the appearance of the top portion of a web page shown in Dan's Figure 9. The Applicant respectfully disagrees with the Examiner's characterization of the Applicant's claimed “header” as being obvious in view of the Dan reference's top of a web page.

Moreover, in the Office action, the Examiner admits certain deficiencies of the Dan reference, the Office action reading as follows:

In Fig. 21, Dan does not show that the banner is in “addition to said content.”...

Dan also fails to teach that at least one of the plurality of packets of the ongoing packet transfer comprises a header portion and a separate payload portion and said at least a portion of the image data is transmitted in the header portion.

The Examiner has combined the Dan reference with the Kitamura reference, using an argument that reads as follows:

Kitamura teaches an analogous method for forming sub image data packet including data of sub image superimposed on main image, which discloses the

idea of having at least one of the plurality of packets of the ongoing packet transfer comprises a header portion and a separate payload portion and said at least a portion of the image data is transmitted in the header portion (col. 2, lines 15 - 61; col. 13, lines 43 - 49).

The Applicant disagrees. The Kitamura reference expressly discloses that none of the information about the shape of the picture to be displayed is contained in the packet header, but instead picture shape information is contained in the data payload portion of the packet. There is no picture shape data contained in the header portion of the packet. The Kitamura reference at column 13, lines 43-49, which read as follows:

In the assigned display region, only information of shapes of sub images to be displayed is treated as display data. The display color, the contour compensating color, and the sub image contrast that are required for each pixel are formed in a header portion. Thus, the amount of data to be transmitted can be reduced. Since the display data portion is bit map data, the shapes of sub images can be freely displayed.

By contrast, in the Applicant's claimed invention, at least one of the plurality of packets of the ongoing packet transfer comprises a header portion and a separate payload portion and the at least a portion of the image data or picture data is transmitted in the header portion. The Applicant's claimed "picture data" or "image data" is a binary image file having a binary based format used to define transmission of encoded bitmap data, as is disclosed, for example at the Applicant's page 7, lines 9-14, which read as follows:

In accordance with the invention, a binary image file, such as a JFIF formatted image, is encoded within a tag-length-value triplet of the main file transfer operation. A JFIF formatted image is a binary based format used to define the transmission of the widely used JPEG encoded bitmap data. It should be noted that the invention is not limited to JFIF formatted images but is applicable to other binary based encoded images such as JPG, JPG2000, GIF, PNG, TIF, EXIF, AVI, and MP3.

Moreover, there is no disclosure in Kitamura of the Applicant's claimed "a separate header portion comprising at least a portion of said picture data". Still further, there is no disclosure or suggestion in Kitamura of the Applicant's claimed picture data being transmitted during the download in addition to the content being transferred. The Applicant's claims read in part as follows:

during an ongoing packet transfer operation in which packets of content are transferred between a sending device and a receiving device, picture data in addition to said content, ...

In contrast, the Kitimura reference discloses at column 5, lines 4-9 and Figure 1, that the data packet is divided into a control portion in the sub-image header 6, a sub-image display data portion 7, and a sub-image control data portion 8, all of which constitutes the content of a single picture. Kitimura fails to disclose or suggest the Applicant's claimed "picture data in addition to said content" or the Applicant's claimed picture data being transmitted during the download in addition to the content being transferred.

The combination of Dan in view of Kitamura fails to disclose or suggest, *inter alia*, including at least a portion of the image data (for claims 24, 29, 35, 37, and 38) or picture data (for claims 1, 11, 36, 40, and 41) in the header portion, as claimed by the Applicant. The Applicant's claimed "picture data" or "image data" is a binary image file having a binary based format used to define transmission of encoded bitmap data, as is disclosed, for example at the Applicant's page 7, lines 9-14.

The combination of Dan in view of Kitamura does not disclose or suggest the Applicant's claimed invention in the independent claims 1, 11, 24, 29, 35, 36, 37, 38, 40, and 41. Thus, claims 1, 3, 11, 18, 19, 22, 24-33, and 40-41 are patentable over this combination.

B. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dan and Kitamura in view of Hines et al (United States Patent 6,570,585)

The Applicant's remarks regarding the Dan and Kitamura references are incorporated herein by reference. The Examiner has combined Dan and Kitamura with Hines, for allegedly disclosing embedding MPEG in HTML. However, Hines fails to disclose or suggest the Applicant's claimed invention, wherein at least one of the plurality of packets of the ongoing packet transfer comprises a header portion and a separate payload portion and the at least a portion of the image data (for claims 24, 29, 35, 37, and 38) or picture data (for claims 1, 11, 36, 40, and 41) is transmitted in the header portion, as discussed above. The combination of Dan and Kitamura in view of Hines fails to disclose or suggest the Applicant's claimed invention in independent claims 1, 11, 24, 29, 35, 36, 37, 38, 40, and 41. Thus, dependent claims 5 and 6 are patentable over this combination.

C. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dan and Kitamura in view of Bell United States Patent 6,600,902

The Applicant's remarks regarding the Dan and Kitamura references are incorporated herein by reference. The Examiner has combined Dan and Kitamura with Bell, for allegedly disclosing transmissions in accordance with the Object Exchange (OBEX) transfer protocol. However, Bell fails to disclose or suggest the Applicant's claimed invention, wherein at least one of the plurality of packets of the ongoing packet transfer comprises a header portion and a separate payload portion and the at least a portion of the image data (for claims 24, 29, 35, 37, and 38) or picture data (for claims 1, 11, 36, 40, and 41) is transmitted in the header portion, as discussed above. The combination of Dan and Kitamura in view of Bell fails to disclose or suggest the Applicant's claimed invention in independent claims 1, 11, 24, 29, 35, 36, 37, 38, 40, and 41. Thus, dependent claim 10 is patentable over this combination.

D. Claims 4, 7, 14, 15, 20, 23, and 34-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dan and Kitamura in view of Yu et al United States Patent 6,684,087

The Applicant's remarks regarding the Dan and Kitamura references are incorporated herein by reference. The Examiner has combined Dan and Kitamura with Yu, for allegedly disclosing that individual pictures are transmitted for display in succession on the receiving device to be viewed as a mini-clip. However, Yu fails to disclose or suggest the Applicant's claimed invention, wherein at least one of the plurality of packets of the ongoing packet transfer comprises a header portion and a separate payload portion and the at least a portion of the image data (for claims 24, 29, 35, 37, and 38) or picture data (for claims 1, 11, 36, 40, and 41) is transmitted in the header portion, as discussed above. The combination of Dan and Kitamura in view of Yu fails to disclose or suggest the Applicant's claimed invention in independent claims 1, 11, 24, 29, 35, 36, 37, 38, 40, and 41. Thus, claims 4, 7, 14, 15, 20, 23, and 34-38 are patentable over this combination.

E. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dan and Kitamura in view of Yu et al and further in view of Hines

The Applicant's remarks regarding the Dan, Kitamura, Yu, and Hines references are incorporated herein by reference. However, the combination of Dan, Kitamura, Yu, and Hines fails to disclose or suggest the Applicant's claimed invention, wherein at least one of the plurality of packets of the ongoing packet transfer comprises a header portion and a separate payload portion and the at least a portion of the image data (for claims 24, 29, 35, 37, and 38) or picture data (for claims 1, 11, 36, 40, and 41) is transmitted in the header portion, as discussed above. The combination of Dan, Kitamura, Yu, and Hines fails to disclose or suggest the Applicant's claimed invention in independent claims 1, 11, 24, 29, 35, 36, 37, 38, 40, and 41. Thus, dependent claims 8 and 9 are patentable over this combination.

CONCLUSION

Based on the foregoing amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the rejection of claims and allowance of this application.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required by this response, or credit any overpayment to Deposit Account No. 50-4827, Order No. 1004289-070US (4208-4066).

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 50-4827, Order No. 1004289-070US (4208-4066).

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By:

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